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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PALM DESERT NATIONAL
BANK, a National Banking
Association,

Plaintiff,

v.

MONEY MARKETING, INC., a
New Jersey Corporation,

Defendant.

Case No. EDCV 06-1214-VAP
(JCRx)

**[Motion filed on April 1,
2008]**

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
MOTION FOR AWARD OF
ATTORNEYS' FEES AND EXPENSES**

The Court has received and considered all papers
filed in support of, and in opposition to, Plaintiff Palm
Desert National Bank's Motion for Award of Attorneys'
Fees and Expenses. The Motion is appropriate for
resolution without oral argument. See Fed. R. Civ. P.
78; Local Rule 7-15. For the reasons set forth below,
the Court GRANTS the Motion in part and DENIES it in
part.

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I. BACKGROUND

The Court issued its Findings of Fact and Conclusions of Law pursuant to Federal Rule of Civil Procedure 52 on March 18, 2008, finding Plaintiff Palm Desert National Bank ("PDNB") was entitled to entry of judgment in its favor in the amount of \$2,185,160.76, on the claims in its Complaint for breach of contract and express indemnity. Specifically, the Court found that Defendant Money Marketing, Inc. ("MMI") had breached the Sponsorship Agreement the parties had entered into, which contained, inter alia, a provision entitling the prevailing party in litigation to enforce the Agreement to an award of its attorneys' fees. [Trial Ex. 26, § 6.17.]

Plaintiff filed a Motion for Award of Attorneys' Fees and Expenses ("Motion" or "Mot.") on April 1, 2008, along with the Declaration of Yi-Chin Ho ("Ho Decl."). Defendant filed Opposition on April 14, 2008. Plaintiff filed a Reply and the Supplemental Declaration of Yi-Chin Ho ("Supp. Ho Decl.") on April 21, 2008.

II. LEGAL STANDARD

In a diversity case, state law governs the right to attorneys' fees and the method for calculating such fees. Mangold v. California Public Utilities Commission, 67

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1 F.3d 1470, 1478 (9th Cir. 1995). California Civil Code
2 section 1717 provides:

3
4 In any action on a contract, where the contract
5 specifically provides that attorney's fees and
6 costs, which are incurred to enforce that
7 contract, shall be awarded either to one of the
8 parties or to the prevailing party, then the
9 party who is determined to be the party
10 prevailing on the contract, whether he or she is
11 the party specified in the contract or not,
12 shall be entitled to reasonable attorney's fees
13 in addition to other costs.

14
15 Cal. Civil Code § 1717(a) ["section 1717(a)"] .
16

17 Attorneys' fees awarded under section 1717(a) are
18 calculated using the lodestar method. PLCM Group v.
19 Drexler, 22 Cal.4th 1084, 1095 (2000). To calculate the
20 amount of attorneys' fees under the lodestar method, a
21 court must calculate "the number of hours reasonably
22 expended multiplied by a reasonable hourly rate." PLCM
23 Group, 22 Cal.4th at 1095. The California Supreme Court
24 has found "a careful compilation of the time spent" to be
25 "[f]undamental to the court's determination" of an
26 attorneys' fees award. Serrano v. Priest, 20 Cal. 3d 25,
27 48 (1977). To determine a reasonable rate for each
28

1 attorney, the Court must look to the rate prevailing in
2 the community for similar work performed by attorneys of
3 comparable skill, experience, and reputation. PLCM
4 Group, 22 Cal. 4th at 1095. There is a presumption that
5 the lodestar figure represents a reasonable fee. Id. at
6 1095-96.

7
8 "The lodestar figure may then be adjusted, based on
9 consideration of factors specific to the case, in order
10 to fix the fee at the fair market value for the legal
11 services provided." Id. at 1096 (citing Serrano, 20 Cal.
12 3d at 49). The factors that may give rise to an
13 adjustment in the lodestar figure include "the nature of
14 the litigation, its difficulty, the amount involved, the
15 skill required in its handling, the skill employed, the
16 attention given, the success or failure, and other
17 circumstances in the case." Id. (citing Melnyk v.
18 Robledo, 64 Cal. App. 3d 618, 623-24 (1976)). The award
19 of attorneys' fees under section 1717(a) is "governed by
20 equitable principles," Beverly Hills Properties v.
21 Marcolino, 221 Cal. App. 3d Supp. 7, 12 (1990), and the
22 trial court has "wide latitude in determining the amount
23 of an award." Montgomery v. Bio-Med Specialties, Inc.,
24 183 Cal. App. 3d 1292, 1297 (1986).

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III. DISCUSSION

A. Attorneys' Fees

Plaintiff here moves for \$1,451,276.00 in attorneys' fees, a sum its counsel describes as the "lodestar."¹ [Ho Decl. at 5.] It claims an upward adjustment of the lodestar is justified in this case, [*id.*] but neither seeks one nor explains this boast. There certainly is nothing in the record here which would lead the Court to find that this was an "extraordinary" case where the attorneys faced an "exceptional risk" of not prevailing or recovering any fees. Cf. Chalmers v. City of Los Angeles, 796 F.2d 1205, 1212 (9th Cir. 1986), reh'g denied, amended on other grounds, 808 F.2d 1373 (9th Cir. 1987) (stating that an enhanced award is justified only in "exceptional circumstances" or in the "extraordinary" case). Rather, it was a straightforward piece of business litigation, tried to the court in two days, without complicated facts or novel legal issues. Plaintiff's lawyers assigned six attorneys and two paralegals to prosecute this straightforward case, and

¹In a supplemental declaration submitted with Plaintiff's Reply, Plaintiff's counsel requested an additional \$26,725.00 in "fees and costs for the preparation of the Motion, the Bill of Costs, reviewing and researching MMI's Opposition, and the preparation of this Reply, and for work on other post-judgment matters." [Supp. Ho Decl. ¶ 6.] Counsel's statement does not identify the billing professionals who conducted the work for which this additional amount is sought, nor does it specify the basis for its request for additional "costs." [*Id.*] The Court therefore denies this additional request based on the absence of sufficient supporting detail to determine its reasonableness.

1 seek fees representing an amount equal to 66.4 per cent
2 of the \$2,185,160.76 awarded in the Court's Findings of
3 Fact and Conclusions of Law.

4
5 In support of its fee request, Plaintiff has
6 submitted the declaration of one of its attorneys, who
7 summarized for each month the hours spent, tasks
8 performed, and amounts charged. [See Ho Decl. ¶¶ 27-41.]
9 The moving party also submitted evidence regarding rates
10 charged by attorneys of allegedly comparable skill,
11 reputation, and experience. [Ho Decl. ¶ 43 & Exs. D, E.]
12

13 **1. Reasonable hourly rates**

14 The Court has reviewed the declaration of Yi-Chin Ho,
15 a partner at the law firm representing Plaintiff and
16 "lead trial counsel" in this matter, [Ho Decl. ¶ 16], and
17 considered the information submitted regarding the
18 experience and expertise of each of the billing
19 professionals whose work is included in the fee
20 application. The Court has also considered the
21 information submitted regarding billing rates charged by
22 other lawyers and law firms who were not involved in this
23 case but who Plaintiff's counsel consider "comparable" in
24 terms of skill and expertise. [Ho Decl. ¶ 43 & Exs. D,
25 E.] Considering the rate prevailing in the community for
26 similar work performed by attorneys of comparable skill,
27 experience, and reputation, as well as the Court's own
28

1 observation of the quality of the work performed in this
2 case, the Court finds a reasonable hourly rate charged by
3 each of Plaintiff's lawyers and paralegals is the
4 following: \$400.00 for Kathrin Wanner, \$350.00 for
5 Yi-Chin Ho, \$400.00 for Stephen Neal, \$275.00 for Michael
6 White, \$300.00 for Erin Witkow, \$250.00 for Diana Kwok,
7 \$170.00 for Sheryl Marshall and \$110.00 for Oscar
8 Velasquez.

10 **2. Number of hours expended**

11 The Court has reviewed and analyzed the tasks
12 described in every monthly billing summary submitted by
13 Plaintiff in support of its fee request.² [See Ho Decl.
14 ¶¶ 27-41.] After doing so, the Court finds it
15 appropriate to reduce the number of hours for which
16 Plaintiff seeks to recover attorneys' fees.
17 Specifically, the Court reduces fees sought for the
18 following:

20 ²Though an attorney's declaration concerning the time
21 spent on a particular case has been found sufficient to
22 support a fee request under California law, Martino v.
23 Denevi, 182 Cal. App. 3d 553, 559 (1986), prudent
24 practice counsels the submission of detailed,
25 contemporaneous time records. See William E. Wegner et
26 al., Civil Trials and Evidence, § 17:171 (Rutter Group
27 2007) (noting that "[d]ocumentary evidence is likely to
28 carry far greater weight than counsel's oral statements
in support of fee claims"); PLCM Group, 22 Cal. 4th at
1096 n.4 (recommending that counsel keep contemporaneous
time records to "facilitate accurate calculation of the
lodestar"). Particularly in this case, where Plaintiff's
fee requests are substantial and its counsel's
description of the work performed is rather vague,
detailed billing records would have supported a more
accurate lodestar calculation.

- 1 • Unnecessary tasks and tasks for which excessive
2 time was spent, such as on basic research or
3 simple tasks, e.g., nearly \$3,000.00 billed
4 during December 2006 for granting extensions of
5 time to answer the Complaint and then to review
6 the Answer [Ho Decl. ¶ 27];
- 7 • Unsuccessful work during the litigation,
8 including the unsuccessful attempt to obtain a
9 pretrial writ of attachment and other failed
10 pretrial motions in this case, [see, e.g., Ho
11 Decl. ¶¶ 29-32 (describing attempts to obtain
12 writ of attachment)];
- 13 • Excessive staffing on the case, e.g., more than
14 a single lawyer attending routine court
15 hearings;
- 16 • Work on a motion for summary judgment that was
17 not filed, and on an opposition to Defendant's
18 motion for summary judgment, which was stricken
19 [see, e.g., Ho Decl. ¶ 35];
- 20 • Excessive time spent on trial preparation,
21 particularly on copying and organizing documents
22 which were unnecessary, inadmissible, or never
23 used during trial.

24
25 The Court has deleted such fees and all others it deems
26 unnecessary, duplicative or excessive.

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Having done so, it finds the appropriate fees in this case for each billing professional are as follows:

Kathrin Wanner			
Month(s)	Hours requested	Hours allowed	Fee allowed
Jan. 2007	5.9	2	\$ 800.00
Feb. 2007	1.9	1.9	\$ 760.00
Mar. 2007	0.7	0.7	\$ 280.00
Apr. 2007	6.8	3.0	\$ 1,200.00
May 2007	6.3	4.0	\$ 1,600.00
June 2007	2.2	2.2	\$ 880.00
July/Aug. 2007	21.2	5.0	\$ 2,000.00
Sept. 2007	77.9	15.0	\$ 6,000.00
Oct. 2007	57.8	25.0	\$ 10,000.00
Nov. 2007	139.0	40.0	\$ 16,000.00
Dec. 2007	156.5	70.0	\$ 28,000.00
Jan. 2008	200.5	50.0	\$ 20,000.00
Feb. 2008	2.5	0.0	\$ 0.00
Mar. 2008	13.0	0.0	\$ 0.00
Total fee:			\$ 87,520.00

Yi-Chin Ho			
Month(s)	Hours requested	Hours allowed	Fee allowed
Oct./Nov. 2006	24.8	5.0	\$ 1,750.00
Dec. 2006	6.2	1.5	\$ 525.00
Jan. 2007	17.4	3	\$ 1,050.00
Feb. 2007	24.7	2.0	\$ 700.00
Mar. 2007	19.1	3.0	\$ 1,050.00
Apr. 2007	57.0	15.0	\$ 5,250.00
May 2007	37.0	10.0	\$ 3,500.00

Yi-Chin Ho			
June 2007	46.4	15.0	\$ 5,250.00
July/Aug. 2007	264.0	200.0	\$ 70,000.00
Sept. 2007	158.6	120.0	\$ 42,000.00
Oct. 2007	92.1	40.0	\$ 14,000.00
Nov. 2007	191.4	100.0	\$ 35,000.00
Dec. 2007	169.7	120.0	\$ 42,000.00
Jan. 2008	290.7	120.0	\$ 42,000.00
Feb. 2008	2.9	0.0	\$ 0.00
Mar. 2008	29.5	5.0	\$ 1,750.00
Total Fee:			\$265,825.00

Stephen Neal			
Month(s)	Hours requested	Hours allowed	Fee allowed
Sept. 2006	20.2	10.0	\$ 4,000.00
Oct./Nov. 2006	18.1	10.0	\$ 4,000.00
Dec. 2006	0.4	0.4	\$ 160.00
Jan. 2007	7.0	3.0	\$ 1,200.00
Total Fee:			\$ 9,360.00

Michael White			
Month(s)	Hours requested	Hours allowed	Fee allowed
Sept. 2006	30.1	10.0	\$ 2,750.00
Oct./Nov. 2006	97.6	20.0	\$ 5,500.00
Jan. 2007	6.6	1.0	\$ 275.00
Feb. 2007	6.7	1.0	\$ 275.00
Apr. 2007	0.5	0.5	\$ 137.50
May 2007	3.0	0.0	\$ 0.00
June 2007	2.1	0.0	\$ 0.00
July/Aug. 2007	101.7	40.0	\$ 11,000.00

Michael White			
Sept. 2007	65.6	30.0	\$ 8,250.00
Oct. 2007	67.8	40.0	\$ 11,000.00
Nov. 2007	115.2	0.0	\$ 0.00
Dec. 2007	14.1	0.0	\$ 0.00
Jan. 2008	14.4	0.0	\$ 0.00
Total Fee:			\$ 39,187.50

Sheryl Marshall			
Month(s)	Hours requested	Hours allowed	Fee allowed
Oct./Nov. 2006	36.5	10	\$ 1,700.00
Sept. 2007	47.7	0.0	\$ 0.00
Oct. 2007	7.9	0.0	\$ 0.00
Nov. 2007	13.7	13.7	\$ 2,329.00
Total Fee:			\$ 4,029.00

Oscar Velasquez			
Month	Hours requested	Hours allowed	Fee allowed
June 2007	7.0	7.0	\$ 770.00
Sept. 2007	63.4	20.0	\$ 2,200.00
Oct. 2007	87.1	30.0	\$ 3,300.00
Nov. 2007	117.8	50.0	\$ 5,500.00
Dec. 2007	57.5	57.5	\$ 6,325.00
Jan. 2008	3.9	3.9	\$ 429.00
Total Fee:			\$ 18,524.00

Erin Witkow			
Month	Hours requested	Hours allowed	Fee allowed
Oct. 2007	23.8	0.0	\$ 0.00

Erin Witkow			
Nov. 2007	48.5	0.0	\$ 0.00
Dec. 2007	51.3	0.0	\$ 0.00
Jan. 2008	18.4	0.0	\$ 0.00
Total Fee:			\$ 0.00

Diana Kwok			
Month	Hours requested	Hours allowed	Fee allowed
Nov. 2007	33.4	0.0	\$ 0.00
Dec. 2007	63.6	0.0	\$ 0.00
Jan. 2008	45.4	0.0	\$ 0.00
Total Fee:			\$ 0.00

3. Total fees awarded

Accordingly, the Court awards Plaintiff the following fees:

- Kathrin Wanner: \$ 87,520.00
- Yi-Chin Ho: \$ 265,825.00
- Stephen Neal: \$ 9,360.00
- Michael White: \$ 39,187.50
- Sheryl Marshall: \$ 4,029.00
- Oscar Velasquez: \$ 18,524.00
- **Total fees:** \$ 424,445.50

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1 **B. Costs**

2 Finally, Plaintiff's Motion seeks certain litigation
3 costs above what it may recover in its Bill of Costs
4 submitted pursuant to Local Rule 54-3. [Mot. at 17-18.]

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6 The taxation of costs is governed by federal
7 procedural law under Rule 54(d) of the Federal Rules of
8 Civil Procedure. In re Merrill Lynch Relocation
9 Management, Inc., 812 F.2d 1116, 1120 n.2 (1987). Costs
10 that may be awarded are set forth in 28 U.S.C. section
11 1920, and the procedure for requesting such costs is set
12 forth in Local Rule 54-3.

13
14 To the extent that Plaintiff seeks additional
15 litigation expenses pursuant to the provision in the
16 Sponsorship Agreement allowing for "reasonable ... costs
17 and expenses in addition to any other relief to which
18 such prevailing party may be entitled," [Trial Ex. 26, §
19 6.17], Plaintiff was required to plead and prove such
20 expenses at trial. Carwash of America-PO LLC v.
21 Windswept Ventures No. I, 97 Cal. App. 4th 540, 544
22 (2002) (where prevailing party seeks recovery of costs
23 not allowed by statute, such expenses "must be pleaded
24 and proven at trial rather than submitted in a cost
25 bill").

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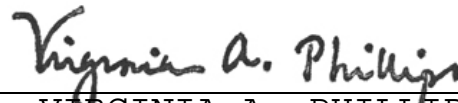
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1 Accordingly, the Court denies Plaintiff's request for
2 litigation expenses other than those taxed as costs under
3 Rule 54(d) and Local Rules 54-3 and 54-4.

4
5 **IV. CONCLUSION**

6 For the foregoing reasons, the Court GRANTS in part
7 and DENIES in part Plaintiff's Motion for Award of
8 Attorneys' Fees and Expenses. Plaintiff is awarded
9 \$424,445.50 in attorneys' fees.

10
11 Dated: June 5, 2008



VIRGINIA A. PHILLIPS
United States District Judge